

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELEANOR ("RONNIE") BEHRINGER,

Plaintiff,

-against-

LAVELLE SCHOOL FOR THE BLIND and
FRANK SIMPSON,

Defendants.

Civil Action No.: 08-4899 (JGK-THK)

**DECLARATION OF JEAN Y. PARK
IN SUPPORT DEFENDANTS' MOTION
TO DISMISS AND/OR FOR SUMMARY
JUDGMENT**

JEAN Y. PARK, pursuant to 28 U.S.C. § 1746, declares:

1. I am an attorney duly admitted to practice before this Court and am a member of the law firm of Kelley Drye & Warren LLP, located at 101 Park Avenue, New York, New York 10178. My firm represents Defendants, Lavelle School for the Blind ("Lavelle" or the "School") and Mr. W. Frank Simpson, in the above-captioned action.

2. I am fully familiar with the facts of this case and submit this Declaration to introduce testimonial and documentary evidence in support of Defendants' Motion to Dismiss and/or for Summary Judgment pursuant to Rules 12(b) and 56(c) of the Federal Rules of Civil Procedure.

3. Attached as "**Exhibit 1**" is a copy of the Complaint, filed on May 28, 2008, and marked *Defendants' Exhibit 16* at plaintiff's deposition.

4. Attached as "**Exhibit 2**" are copies of transcript pages from plaintiff's October 20, 2009 and January 20, 2010 deposition sessions.

5. Attached as "**Exhibit 3**" are copies of transcript pages from the January 25, 2010 deposition of Frank Simpson.

6. Attached as “**Exhibit 4**” is a copy of a memorandum, dated October 15, 2007, relating to a phone interview between the EEOC and plaintiff on October 11, 2007. This document was marked *Defendants’ Exhibit 17* at plaintiff’s deposition.

7. Attached as **Exhibit “5”** are copies of a transcript pages 4 and 5 from the parties’ May 15, 2009 oral argument before Magistrate Judge Katz in connection with motions to compel. Plaintiff’s counsel represented that the only “treatment” plaintiff requires as a recovering alcoholic is to go to Alcoholics Anonymous meetings.

8. Attached as “**Exhibit 6**” are transcript pages from the January 28, 2010 deposition of Diane Tucker.

9. Attached as “**Exhibit 7**” is a copy of plaintiff’s February 16, 1993 disability benefits claim form, marked *Defendants’ Exhibit 9* at plaintiff’s deposition.

10. Attached as “**Exhibit 8**” is a copy of plaintiff’s May 1, 1993 disability benefits claim form, marked *Defendants’ Exhibit 8* at plaintiff’s deposition.

11. Attached as “**Exhibit 9**” is a copy of plaintiff’s annual staff health form, dated February 15, 2003, marked *Defendants’ Exhibit 10* at plaintiff’s deposition.

12. Attached as “**Exhibit 10**” is a copy of plaintiff’s annual staff health form, signed by plaintiff’s physician on January 12, 2004, marked *Defendants’ Exhibit 11* at plaintiff’s deposition.

13. Attached as “**Exhibit 11**” is a copy of plaintiff’s annual staff health form, dated January 18, 2005, marked *Defendants’ Exhibit 12* at plaintiff’s deposition.

14. Attached as “**Exhibit 12**” is a copy of plaintiff’s annual staff health form, signed by plaintiff’s physician on January 18, 2006, marked *Defendants’ Exhibit 13* at plaintiff’s deposition.

15. Attached as “**Exhibit 13**” is a copy of plaintiff’s annual staff health form, dated January 15, 2007, marked *Defendants’ Exhibit 14* at plaintiff’s deposition.

16. Attached as “**Exhibit 14**” are transcript pages from the February 18, 2009 deposition of Vincent P. D’Andrea, Esq.

17. Attached as “**Exhibit 15**” is a copy of plaintiff’s time card report from September 3, 2001 until February 28, 2007, marked *Defendants’ Exhibit 21* at plaintiff’s deposition.

18. Attached as “**Exhibit 16**” is a copy of memo from Simpson to Behringer, dated January 11, 2002, marked *Plaintiff’s Exhibit 26* at Simpson’s deposition.

19. Attached as “**Exhibit 17**” is a copy of a letter from Simpson to Behringer, dated April 24, 2002, marked *Plaintiff’s Exhibit 27* at Simpson’s deposition.

20. Attached as “**Exhibit 18**” is a copy of a letter, dated August 22, 2002, from Simpson and Br. Kearney, marked *Plaintiff’s Exhibit 28* at Simpson’s deposition.

21. Attached as “**Exhibit 19**” are copies of transcript pages from the January 28, 2010 deposition of Lorrie Nanry.

22. Attached as “**Exhibit 20**” is a copy of plaintiff’s October 7, 2003 performance evaluation, marked *Plaintiff’s Exhibit 30* at Simpson’s deposition.

23. Attached as “**Exhibit 21**” is a copy of a memorandum, dated January 14, 2008 regarding an on site interview conducted by the EEOC with Lorrie Nanry on January 9, 2008, marked *Plaintiff’s Exhibit 66* at Nanry’s deposition.

24. Attached as “**Exhibit 22**” is a copy of a memorandum, dated January 14, 2008 regarding an on site interview conducted by the EEOC with Diane Tucker on January 9, 2008, marked *Plaintiff’s Exhibit 63* at Tucker’s deposition.

25. Attached as **“Exhibit 23”** are copies of job descriptions for the Principal position prior to Simpson’s November 2003 reorganization and after this reorganization. Copies of these documents were marked *Plaintiff’s Exhibit 22* at Simpson’s deposition.

26. Attached as **“Exhibit 24”** are copies of notes taken by Diane Tucker of staff meetings on July 26, 27, 31 and August 2, 2006, marked *Plaintiff’s Exhibit 62* at Tucker’s deposition.

27. Attached as **“Exhibit 25”** is a copy of an e-mail exchange between Paco Secada and Gary Wier, marked *Defendants’ Exhibit 24* at plaintiff’s deposition.

28. Attached as **“Exhibit 26”** is a copy of plaintiff’s request for FMLA leave, dated May 25, 2005, marked *Defendants’ Exhibit 25* at plaintiff’s deposition.

29. Attached as **“Exhibit 27”** is a copy of a letter, dated May 2, 2005, from Dr. Sok Yi, addressed “To Whom it may concern,” marked *Defendants’ Exhibit 27* at plaintiff’s deposition.

30. Attached as **“Exhibit 28”** is a copy of plaintiff’s FMLA usage through October 17, 2005, marked *Defendants’ Exhibit 28* at plaintiff’s deposition.

31. Attached as **“Exhibit 29”** is a copy of the race results from the 2005 Annual Conchman Triathlon, marked *Defendants’ Exhibit 29* at plaintiff’s deposition.

32. Attached as **“Exhibit 30”** is a copy of the January 11, 2006 performance evaluation that Simpson originally issued to plaintiff, marked *Plaintiff’s Exhibit 45* at Simpson’s deposition.

33. Attached as **“Exhibit 31”** is a copy of a memo, dated January 31, 2006, from plaintiff to Simpson regarding “Evaluation Conference,” marked *Plaintiff’s Exhibit 50* at Simpson’s deposition.

34. Attached as **"Exhibit 32"** is a copy of a chart prepared by plaintiff, entitled "Response to 2005-06 Annual Evaluation, marked *Plaintiff's Exhibit 47* at Simpson's deposition.

35. Attached as **"Exhibit 33"** is a copy of a revised January 11, 2006 performance evaluation, marked *Plaintiff's Exhibit 44* at Simpson's deposition.

36. Between 2001 to date, plaintiff has participated in over 75 racing events, including marathons and triathlons, throughout the country. Attached as **"Exhibit 34"** is a list of those events gleaned from Internet race results.

37. Attached as **"Exhibit 35"** is a copy of plaintiff's February 28, 2007 termination notice, marked *Defendants' Exhibit 20* at plaintiff's deposition.

Dated: New York, New York
April 23, 2010


JEAN Y. PARK